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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/052,325	03/31/1998	JOHN E. STOCKENBERG	EMC-97-137	9015

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EXAMINER

COLBERT, ELLA

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 05/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

AA

**Office Action Summary**

Application No.

09/052,325

Applicant(s)

JOHN E. STOCKENBERG ET AL

Examiner

Ella Colbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Communication***

1. Claims 1-18 are presented for examination in this communication filed 01/16/02, entered as Reconsideration, paper no. 11.
2. The Petition filed on 03/07/02 has been entered as Petition Granted, paper no. 12.
3. The amendment filed 08/25/00, Amendment B, paper no. 7, has been considered. The amendment to the Specification, page 13, line 22, delete "which," has not been entered because "which" was not found in line 22 and on page 20, line 9, insert -- not --, has not been entered because "connection" was not found in line 22.

### ***Specification***

4. The Specification is objected to because on page 20, line 10, should read as follows: insert -- not -- before "all of this is done on the WKP once the client process has accepted the connection" and delete -- not -- after "connection".

On page 8, line 11, recites "Fig. 4 are two flow charts which provide an overview of the operations performed". This line should read "Fig. 4 and Fig. 4 A are two flow charts which provide an overview of the operations performed".

On page 15, line 1, recites "Data Storage System" filed on December 30, 1997, 1997, and having serial no."

On page 17, line 11, recites "... in a prior are network backup and restore operation." Do Applicants' mean "... in a prior area network backup and restore operation" or "... in a prior art network backup and restore operation" ?

On page 19, line 19, recites " ... recognizes that that first connection has occurred, it needs to". This line should recite "... recognizes that the first connection has occurred, it needs to". Correction is required. See MPEP § 608.01(b).

***Drawings***

5. New formal drawings are required in this application because the writing on the drawing figures is illegible making it difficult to know what is written on the drawing figures. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 13 and 15 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 13 and 15 recite "dynamically allocated port" and this claim limitation is briefly mentioned in Applicants' Specification on pages 6 and 23-25 but is not defined so that it is understood by the Examiner.

Claims 8, 10, and 12 recite "member" which is not mentioned or defined in Applications' Specification. The Examiner does not understand what Applicants' mean by "member."

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,889,943) Ji et al, hereafter Ji in view of (US 5,862,322) Anglin et al, hereafter Anglin.

With respect to claim 1, Ji teaches, at least one first communication mechanism residing on both the first and second computers for facilitating communications between the first and second processes over the network (col. 1, lines 27-49); a second communication mechanism residing on both the first and second computers for

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facilitating communication between the first and second processes through the data storage system (col. 1, lines 50-61). Ji did not teach, means within the first and second processes for allowing the first and second processes to determine whether a communication from the first and second processes is from first or second communication mechanism. Anglin discloses, means within the first and second processes for allowing the first and second processes to determine whether a communication from the first and second processes is from first or second communication mechanism (col. 6, lines 60-66, col. 35, lines 47-67 and col. 36, lines 1-8 and lines 28-46). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a means within the first and second processes for allowing the first and second processes to determine whether a communication from the first and second processes is from the first or second communication mechanism and to combine Ji's at least one first communication mechanism residing on both the first and second computers for facilitating communications between the first and second processes over the network and a second communication mechanism residing on both the first and second computers for facilitating communication between the first and second processes through the data storage system with Anglin's means within the first and second processes for allowing the first and second processes to determine whether a communication from the first and second processes is from the first or second communication mechanism and to modify in Ji because such a modification would allow Ji to have a communication interface linked to the communication interface of the first and second computer system for facilitating processes over a network.

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With respect to claim 2, Ji teaches, the first and second processes are part of a backup or restore process (col. 10, lines 21-55). Anglin discloses, the first and second processes are part of a backup or restore process (col. 11, lines 48-55 and col. 28, lines 45-47). Together Ji and Anglin teach the claim limitations of claim 2.

With respect to claim 3, Ji teaches, at least one first communication mechanism is a network socket (col. 6, lines 28-31 and col. 8, lines 36-44). Network communications and socket calls used over the network are well known to anyone skilled in the art, as described in Applicants' Specification on page 18.

With respect to claim 4, Ji teaches, the second communication mechanism is a data storage system socket (col. 8, lines 46-58).

With respect to claim 5, Ji teaches, the backup and restore operations are capable of backing up and restoring information from a file system (col. 20, lines 10-29). Anglin discloses, the backup and restore operations are capable of backing up and restoring information from a database application (col. 10, lines 54-64). Together Ji and Anglin teach the claim limitations of claim 5.

With respect to claim 6, Ji teaches, (a) establishing at least one first connection over a network between first and second processes residing on different computers (col. 8, lines 18-24 and lines 53-58). Ji did not teach,

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(b) establishing in parallel with at least one first connection a second connection through a data storage system between the first and the second processes. Anglin discloses, (b) establishing in parallel with at least one first connection a second connection through a data storage system between the first and the second processes (col. 10, lines 54-64 and col. 11, lines 48-55). It would have been obvious to one having ordinary skill in the art at the time the invention was made to establish in parallel with at least one first connection a second connection through a data storage system between the first and the second processes and to combine Ji's establishing at least one first connection over a network between first and second processes residing on different computers with Anglin's establishing in parallel with at least one first connection a second connection through a data storage system between the first and the second processes because such a modification in Ji would allow Ji to connect to a client and then to a server where the data is stored on a network.

With respect to claim 7, Ji teaches, creating a pair of communication mechanisms on a designated port (col. 11, lines 14-53).

With respect to claim 8, Ji teaches, requesting with one member of the communication mechanism pair a connection to the other member of the communication pair (col. 10, lines 6-29) and in response to the connection request, accepting the connection request (col. 10, 31-34 and lines 49-55). This dependent claim is also rejected for the similar rationale as claim 7.



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With respect to claim 9, Ji teaches, creating a second pair of communication mechanisms on the designated port, wherein the second pair of communication mechanisms is used for transferring a different type of information than would be transferred over the first pair of communication mechanisms (col. 10, lines 54-55 and col. 11, lines 4-53).

This dependent claim is also rejected for the similar rationale given for claim 7.

With respect to claim 10, Ji teaches, requesting with one member of the second pair of communication mechanisms a connection to the other member of the second pair of communication mechanisms (col. 12, lines 1-17).

This dependent claim is rejected for the similar rationale given for claim 8.

With respect to claim 11, Ji teaches, creating a third pair of communication mechanisms on a second designated port (col. 8, lines 59-67 and col. 9, lines 1-67).

With respect to claim 12, Ji teaches, requesting with one member of the third pair of communications mechanisms a connection to the other member of the second pair of communications mechanisms (col. 8, lines 18-54).

This dependent claim is rejected for the similar rationale given for claims 8, 10, and 11.

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With respect to claim 13, Ji teaches, receiving information about a group of resources in the data storage system (col. 5, lines 28-46); in response to receiving information about the group of resources, creating a fourth pair of communication mechanisms on a dynamically allocated port (col. 9, lines 51-67); and connecting the fourth pair of communication mechanisms to each other through the data storage system (col. 10, lines 18-31 and lines 49-55).

With respect to claim 14, this dependent claim is rejected for the similar rationale given for claim 1.

With respect to claim 15, Ji teaches, identifying resources on a data storage device to be used in order to transfer information through the data storage device (col. 5, lines 26-43).

This claim is also rejected for the similar rationale given for claims 6 and 13.

With respect to claim 16, this dependent claim is rejected for the similar rationale given to claims 1 and 5.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Yanai (US 5,742,792) discloses two data storage systems and the back-up of data.

Ofek (US 6,092,066) discloses a data network, data storage, a first system, and a second system.


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***Inquiries***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 703-308-7064. The examiner can normally be reached on Monday-Thursday from 6:30 am -5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1038. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for Official communications, 703-746-7240 for Non-Official communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

  
E. Colbert  
May 13, 2002

  
VINCENT MILLIN  
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